

TOWN OF HINGHAM

Board of Appeals



MEETING MINUTES

DATE: 3/16/16

PLACE: Central North Meeting Room, Town Hall

MEMBERS PRESENT:

Fisher, Freeman, Maguire

The Chair called the duly noticed meeting to order at 7:02 pm. Regular Members Joseph M. Fisher, Chair, and Joseph W. Freeman, and Robyn Maguire were in attendance. Senior Planner/Zoning Administrator, Emily Wentworth, was also in attendance.

The Chair then asked to review the upcoming schedule. Members confirmed availability to meet jointly with the Planning Board on Monday, April 11, 2016.

7:06 p.m. Cont. of Hearing: 162 Hull Street

The Chair reopened a hearing on an application submitted by Architect Vcevy Strekalovsky on behalf of Zaid Al Rashid for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a two-car garage (26' x 24') resulting in a 16' front yard setback where 50' is required at 162 Hull Street in Residence District C. He noted that the Board received correspondence from Vcevy Strekalovsky, dated March 8, 2016, requesting a withdrawal without prejudice since an 18' front yard setback would be permitted by right under the front yard setback averaging exemption. Upon a motion made by J. Freeman and seconded by R. Maguire, the Board voted unanimously to grant the requested withdrawal without prejudice.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

7:02 p.m. Cont. of Hearing: 4 Whiting Street

The Chair opened the hearing on an application from Lehigh Gas Corporation for a Modification to an existing Special Permit A1 dated March 18, 1991 under § III-A, 5.1 along with a front yard setback Variance from § IV-A and § III-B, 3 of the Zoning By-Law and such other relief as necessary to convert an existing gas station from full service to self service operation and construct a 22' X 38.5', 2 column canopy over the existing fuel dispensers at 4 Whiting Street in Business District B.

The Chair noted that the Applicant requested a continuance to May 18, 2016 along with an extension on the deadline to act on the application to June 18, 2016. J. Freeman made a motion,

seconded by R. Maguire, to grant the requested continuance to May 18, 2016 at 7:00 pm and accept an extension of the time to act to June 18, 2016. The motion passed unanimously.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

7:09 p.m. Hearing: 14 Sherwood

For the Applicant: John C. Carey and Leslie Carey, Esq.
Can Tiryaki, Architect
Terry McGovern, Morse Engineering Co., Inc.

The Chair read the legal ad for an application from John C. Carey for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to replace an existing shed with a 15'x25' single car, detached garage located within the required 15' side and rear yard setbacks at 14 Sherwood Road in Residence District A.

Attorney Carey introduced herself to the Board. She reviewed the existing conditions. The property consists of approximately 9,205 SF improved by a single-family dwelling and a detached accessory structure. The lot is rectangular in shape with a narrower width (68') than length (136'). The submitted plan locates a proposed septic system to the rear of the dwelling and east of the detached accessory structure.

The proposed plan would raze the existing nonconforming shed, which is located in the southwest corner of the property and within both the required rear and side yard setbacks. A new detached single-car garage would be constructed in the shed's approximate location and basically equidistant from side and rear property lines at 3'-9" and 4' respectively. The proposed 15'x25' structure would modestly improve the existing nonconforming rear yard setback associated with the shed from approximately 1.5' to 4'. However, the construction would also intensify the nonconforming side yard setback (7' presently, 3'-9" proposed).

The project engineer reviewed the proposed septic plan. He said that the ground water elevation is such that the proposed location just complies with the minimum distance. Minimum Board of Health setbacks are also maintained. He said that a conforming system cannot be located anywhere else on the lot. He submitted into the record a conceptual conforming garage location; however, he said he could not site a functioning septic system that would achieve BOH setbacks.

Atty. Carey noted that both directly affected abutter's submitted letters of support for the development.

The Chair opened the hearing for public comment.

Tom Patch, Ship Street, provided the Board with information that he believes they need to consider relevant to the subject property. He reviewed the original subdivision plan and photographs of the shed from when the property sold to the present owner in 2011. He believes that the entire area has similarly shaped lots.

The project architect then addressed the Board. He submitted an updated plan, dated March 16, 2016 that simplified the building design. The cupola has been removed. He believes the proposed structure is modest in scale, just large enough to fit a single car.

Atty. Carey reviewed again how the property is affected by its shape and soil conditions. She then described again how the rear yard nonconformity would be improved and the neighbor to the side described the increase in the extent of the side yard setback nonconformance as de minimus. Members noted that while the shape may not be evident generally in the district, the soil conditions provide a more compelling basis for the variance in this instance. The Board found no other viable options.

A member the questioned a note on the elevation plan, which indicates that the siding would consist of cedar shingles, though the drawing itself shows clapboard siding. Staff noted that the Applicant had confirmed by email that the siding would consist of "double dipped stained Maibec cedar shingles in a very light gray "lighthouse gray" to match the house."

The Board then reviewed the requisite findings.

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The lot is unusually shaped - greater in length (136') than width (68'). The lot is previously improved by a nonconforming single-family dwelling and detached accessory structure. Finally, the wastewater disposal system will be located in the rear portion of the property, which is the only area with suitable soils available for this purpose. These circumstances in combination especially affect the subject property and not generally the zoning district.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The narrow shape property and location of both the septic system and nonconforming residence on the lot limit by right placement of the proposed accessory structure. Absent relief, the Applicant would be prohibited from building a functioning garage similar in size and location to many others in the neighborhood, which would negatively impact the Applicant's enjoyment of the Property.
3. **A Variance may be granted without substantial detriment to the public good.** The proposed accessory structure will be located in the approximate location as an existing nonconforming shed. The design of the proposed structure will enhance the property in a manner consistent with others in the neighborhood. As evidenced by several letters of support entered into the public record, there will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed accessory structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The proposed garage will improve a nonconforming rear yard setback, and only modestly intensify the nonconforming side yard setback, associated with an existing detached accessory structure. The structure is an allowed

accessory use to the principal residential use of the Property. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

The Board considered potential conditions. Upon a motion made by R. Maguire and seconded by J. Freeman, the Board then voted unanimously to grant the requested Variance from § IV-A of the By-Law to replace an existing shed with a 15'x25' single-car, detached garage located within the required 15' side and rear yard setbacks at 14 Sherwood Road in Residence District A, subject to the following condition:

1. The construction shall be completed in accordance with the above-referenced plan, and representations made during the public hearing such that the detached garage will be located no closer than 3'-9" to the side and 4' to the rear property lines.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

7:37 p.m. Hearing: 16-18 Hemlock Road

For the Applicant: Martin Nee

The Chair read the legal ad which described the application from Martin S. Nee filed an application for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to replace an existing shed that experienced significant snow damage with a new 8'x10' shed located 0' from the rear yard opposite Nutty Hill Road and 5' from the rear yard opposite Hemlock Road where 20' setbacks are required at 16-18 Hemlock Road in Residence District B.

The Board confirmed that the proposed plan would locate a shed in the same area and envelope as the existing. The Chair said that he can't imagine a more equitable situation to get this addressed.

The Applicant addressed the Board. He submitted two letters of support from abutters at 20 Hemlock Road and 1 Nutty Hill Road. He then reviewed a photograph of the area which demonstrates that each adjoining property has a similarly located accessory structure. He indicated that he wants to reconstruct the building that was damaged during last year's snow. He explained that a shared septic system is located to the rear of the dwelling and it limits location of the shed elsewhere on the property.

Staff noted that Section III-I, 1.B. of the By-Law permits reconstruction of *lawfully* existing nonconforming buildings similarly damaged by natural disaster. The Applicant submitted a variance application as he was unable to demonstrate that the existing shed qualifies as lawfully preexisting.

The Chair opened the hearing for public comment. No one appeared to comment. The Board then reviewed the requisite findings as follows:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The Property is previously improved by a nonconforming

two-family dwelling and detached accessory structure. The lot is further limited by the location of the onsite wastewater disposal system, which includes a 10'x60' Soil Absorption System to the west of the principal structure. A 1000 gallon pump tank and 1500 gallon are located to the north of two-family dwelling. The east front portion of the property is limited by the existing driveway. These circumstances in combination especially affect the subject property and not generally the zoning district.

2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The location of both the existing septic system and nonconforming two-family dwelling on the lot limit by right placement of the proposed accessory structure. Absent relief, the Applicant would incur significant expense in relocating the existing septic system. Alternately, the Applicant would be prohibited from reconstructing the existing, damaged shed, which would negatively impact the Applicant's enjoyment of the Property.
3. **A Variance may be granted without substantial detriment to the public good.** The proposed accessory structure will be located in the approximate location as an existing nonconforming shed. The design of the proposed structure will enhance the property in a manner consistent with others in the neighborhood. There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed accessory structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The structure is an allowed accessory use to the principal residential use of the Property. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

Upon a motion made by J. Freeman and seconded by R. Maguire, the Board then voted unanimously to grant the requested Variance from § IV-A of the By-Law to replace an existing shed that experienced significant snow damage with a new 8'x10' shed located 0' from the rear yard opposite Nutty Hill Road and 5' from the rear yard opposite Hemlock Road where 20' setbacks are required at 16-18 Hemlock Road in Residence District B, on the condition that the shed installation is completed in accordance with the submitted plans and representation made to the Board during the hearing.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

7:47 p.m. Hearing: 71 Wompatuck Road

For the Applicant: Tom Rowan

The Chair read the legal ad describing the application from Meghan K. & Thomas H. Rowan for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to replace an existing

front deck and stairs with a new deck and stairs resulting in 21' front yard setback and 3.8' side yard setback where 25' and 15' are respectively required at 71 Wompatuck Road in Residence District A.

The Applicant addressed the Board. He then filed a corrected plan, which depicts a 6' wide staircase. He said that the original plan incorrectly listed this figure as 9'. As corrected, the Board agreed that the stairs constitute a permissible projection under Section IV-C of the By-Law.

The Applicant then explained that the requested relief would allow both the replacement and expansion of the existing front deck and stairs within the required side yard. The construction is intended to provide safe means of access to the home and improved its appearance. He described the property, which consists of approximately 7,437 SF located on the east side of Wompatuck Road. The lot is narrow in shape with a length (149') three times greater than the width (50'). The property is previously improved by a nonconforming single-family dwelling and detached accessory structure. The first floor of the principal structure at elevation 20.5 is significantly higher than the surrounding area. Spot grades identified on the lot range from el. 13 at the front of the dwelling to el. 16 at the rear. The home is presently accessed by way of an undersized porch and stairs that are in need of replacement.

The Chair opened the hearing for public comment. No one appeared. The Board then reviewed the requisite findings as follows:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The Property is previously improved by a nonconforming single-family dwelling and detached accessory structure. The first floor of the principal structure is elevated above ground level by approximately 7' at the front of the lot. These circumstances in combination especially affect the subject property and not generally the zoning district.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The location of the existing single-family dwelling on the lot, both in terms of placement and elevation, limit by-right development options. A grant of a variance in this instance will allow for reasonable use that is consistent with other single-family uses in the Residence A zoning district.
3. **A Variance may be granted without substantial detriment to the public good.** The proposed project will not create any noise, traffic, or result in other similar negative impacts. The proposed project will improve the utility of the structure, as well as its appearance. There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed accessory structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The proposed structures are allowed accessory uses to the principal residential use of the Property. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

A member asked what the total incursion into the side yard setback would result from the proposed project. The Board also asked what the side setback would be as measured to the proposed stairs. The Applicant suggested that these figures could be measured from the plan; however, staff noted that the submitted plans were provided in reduced form such that the scale was no longer an accurate measurement.

The Applicant requested a short continuance to produce an updated plan. Upon a motion made by J. Freeman and seconded by R. Maguire, the Board voted unanimously to grant the requested continuance to March 30, 2016 at 6:50 pm.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

8:02 p.m. Hearing: 13 Marsh Street

For the Application: Attorney Brandon Ruotolo

The Chair read the legal ad for the application from Sandra Mazzola for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to replace a single-story dwelling with a two-story dwelling that exceeds the maximum height requirements and reconstruct and extend a nonconforming detached garage within 6.69' of the front property line where 15' is required at 13 Marsh Street in Residence District A.

Attorney Ruotolo addressed the Board. He provided members with photographs of the existing home on the lot. He then clarified that the proposed construction would be a two-story structure because the attic does not include habitable space due to its proposed truss system construction.

He then described the onsite topography as variable. The southwest corner of the lot sits at el. 20 and the northwest corner is at el. 23; in between, grades rise approximately 10-15' to el. 38 in the easterly side yard. He said that is unusual for an 11,024 SF lot to experience 15' grade changes.

He described two tests for measuring height. The new construction would exceed the maximum height of 35' as measured from the grade plane to the peak of the roof by 3.61'. The proposed structure also exceeds the maximum 40' height as measured from the where the finished grade intersects with the perimeter wall at its lowest point by 4.21'.

He then reviewed the requested relief for the garage. The proposed plan calls for reconstruction of both existing structures. The proposed new structures would each be reoriented on the lot. The new two-car (25.88' x 30.21') garage would be accessed from the side as opposed to the front elevation. A relatively small portion of the proposed structure (~51 SF) falls within the required side yard setback. Significantly more of the proposed structure is located within the required front yard setback, though the proposed plan would not reduce the minimum linear measurement of the nonconforming front setback measured to the existing single-car garage. The Board asked whether

the garage could be shifted modestly to comply with the side yard setback, or at least go no closer than the existing structure to the westerly side property line. The project representative verified that it could be relocated.

He then reviewed the statutory findings. 1. He noted that the site has extreme grade changes. The soil is consists almost entirely of ledge. 2. Literal enforcement would necessitate incredible earth work. The garage is required to provide storage for the home, which does not have a basement. 3. The proposed structures will improve the property in a manner consistent with others in the neighborhood and otherwise the project will not create any noise, traffic or other nuisance for the neighborhood. 4. The proposed uses are permitted within the district.

The Chair then opened the hearing for public comment.

Mary Ann Hunter, 5 Hayes Rd., described the ledge in the area, which she believes extends across several properties. She said her insurance company would require notice if there is going to be blasting. The Chair clarified that the blasting would only be required if the variance was denied, so that the resulting lower grades would make the structure conform to the height requirements. She then asked about the applicant's name. She said she had met with a Jason Santana, but the applicant is listed as Sandra Mazzola. The project representative agreed to submit some documentation to clarify the different parties involved. She added later that the neighborhood experiences flooding from ground water periodically. She said that her family had lived or summered in the area since the 1800s.

Jeff Cuttler, 24 Grove Ave., asked a couple of questions. He questioned the overall height of the structure. The Applicant referred to the plan to verify that the height, depending on which test is used, is approximately 3.5-4.5' above that otherwise permitted. He then asked whether the Board considered variances on a case-per-case basis as opposed to creating a precedence each time it grants relief. The Chair explained that in the case of a variance, each applicant needs to make their own case. The abutter just wants to ensure that the Board reviews the neighborhood to determine what is appropriate, not just there.

He then asked about a potential enforcement issue with respect to another property in the neighborhood. The Chair said the first step is to report a suspected violation to the Building Commissioner.

Gretchen Kinder, 24 Grove Ave., asked whether the applicant intends to live in the home. The Chair said that is not a factor in the Board's decision.

Mike Darling, 9 Hayes Road, described another property in the area that will likely be demolished in the near future. He expressed concern about the expected impacts of the additional development on the neighborhood. A member reviewed how the noise bylaw limits construction during certain hours.

Tom Veldran, 11 Marsh Street, expressed concern about the proposed structure. He believes that the 64' expanse that will face his property will loom over his house. He also expressed concern about the larger garage and its proximity to the street, which is narrow. He asked why the structure couldn't be lower, or the roof pitch less steep. The attorney said that the attic area has to house all the utilities for the house because there is no basement.

Lisa Veldran, 11 Marsh Street, said she is concerned about the size of the garage. It is located very close to a curve in the street and may create a hazard. She questioned the storm water management plan.

The project representative explained that the garage was reoriented to improve its safety. The property owner was concerned that the existing garage backs onto the street directly. He then said that the storm water designs would be required at the building permit stage. The Chair asked whether the Board should review the storm water plan first, or consider performance standards.

Attorney Ruotolo explained that the existing footprint is approx. 1,000 SF. and he believes the size was intended to be the same or slightly smaller than others in the neighborhood. He believes that the proposed footprint is slightly smaller than surrounding homes.

Tom Patch, Ship Street, complimented the attorney on the presentation. He then submitted into the record several public documents. He asked to see the height and grade measurements. He then reiterated the neighbors' concerns about blasting. He questioned whether the pitch could be changed to lower the building height. He then noted that the equities for allowing the expansion for a preexisting nonconforming are different than for a noncompliant garage. He thinks the applicant should have to demonstrate that the existing garage is grandfathered even though it would be reconstructed. He also thinks that the garage should be moved back. He said that he wants the Board to make an intelligent, informed decision.

A member asked whether the garage structure could be reduced in size. It is proposed to be larger than the typical two-car garage. The project representative explained that the proposed dwelling would not include a garage and its attic would be used for mechanical equipment. The garage would provide some additional storage space for the homeowner. A member then asked whether the roof of the dwelling could be lowered. They decided that the peak could be lobed off; however, this would result in an unusual appearance. Alternately, the grade of the entire lot could be reduced, but this would necessitate significant earthwork and disturbance to the neighborhood.

The attorney asked the Board to grant an approval as opposed to continuing the hearing.

The Board then reviewed the requisite findings as follows:

1. **There are circumstances relating to soil conditions, shape or topography especially affecting the land but not affecting generally the zoning district.**

There are significant areas of exposed ledge on the property and onsite topography varies dramatically. The southwest corner of the lot sits at el. 20 and the northwest corner is at el. 23; in between, grades rise approximately 10-15' to el. 38 in the easterly side yard. The front of the property is also affected by an unusual shape due to the curvature of Marsh Street. The combination of these soil conditions, topography, and lot shape are not generally found in the surrounding neighborhood or Residence District A more generally.

2. **The literal enforcement of the Bylaws would involve substantial hardship financial or otherwise.** A literal enforcement of maximum height requirements of the By-Law would result in significant earthwork, creating a hardship for the Applicant as well as the neighborhood due to the amount of blasting that would take plan to lower the existing

grades. Literal enforcement of the setback requirements related to the proposed garage would result in a structure that would be nonfunctional due to the curvature of the front property line, thereby creating a substantial hardship for the Applicant. A grant of the requested relief will allow for a reasonable use that is entirely consistent with a single family use in the Residence A Zoning District.

3. **A variance may be granted without substantial detriment to the public good.** The proposed project will not create any noise, traffic or result in other similar negative impacts. The design of the proposed structures is consistent with the character of the neighborhood and other single family residential and accessory uses in the Residence A Zoning District. Adverse effects on the neighborhood will be mitigated through compliance with conditions contained herein.
4. **A variance may be granted without nullifying or substantially derogating from the intent or purposes of the Bylaw.** The area of the proposed dwelling that exceeds the permissible height limitation is modest in size and the structure will otherwise conform to the maximum number of stories allowed. The proposed garage will improve access to an existing nonconforming garage and as a result will also improve traffic safety on the street. The proposed structures will otherwise contain allowed uses that in no way derogate from the intent or purposes of the By-Law.

The Board then discussed the following conditions:

1. The Applicant shall construct the single-family dwelling in a manner consistent with the approved plans and the representations made at the hearings before the Board such that the maximum height will not exceed 38.61' measured from grade plane or 44.21' measured from the intersection between the finished grade and the lowest point of the perimeter wall.
2. The Applicant shall construct the garage in a manner consistent with the approved plans as modified by the representations made at the hearings before the Board as follows:
 - a. the resulting footprint shall be no greater than 25.88' x 30.21'; and
 - b. the garage shall be located no closer than 14.04' to the westerly side property line or 6.69' from the front property line.A revised plan addressing this condition shall be submitted to the Zoning Administrator within 30 days of this Decision.
3. No work shall commence until a construction schedule has been submitted to the Zoning Administrator along with documentation that the schedule has been provided to notice abutters.
4. Storm water management systems shall be designed so that offsite post-development peak discharge rates do not exceed pre-development peak discharge rates.
5. The existing density of vegetation on the site shall be maintained. The Applicant shall include an existing conditions landscape plan, prepared by a Registered Landscape

Architect, with an application for a Building Permit.

6. Construction shall comply with the Town of Hingham Noise Bylaw.
7. Use of the attic area shall be limited to storage and mechanical purposes. The attic shall not be converted to habitable space without modification of this Decision.

R. Maguire then made a motion, seconded by J. Freeman, to grant the requested variances subject to the above-referenced conditions. The motion passed unanimously.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

Meeting adjourned at 9:40 p.m.

Respectfully submitted,

Emily Wentworth